

### **REMARKS**

Claims 1, 2, 6-26 and 30-33 are currently pending in this application. By this amendment, Claims 1, 21, 30 and 32 have been amended and Claims 3 and 5 have been canceled. No new matter has been added to this application by this amendment. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

In the Office Action, Claims 1-3 and 5-17 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,665,073 to Bulow et al. ("Bulow"). Under 35 U.S.C. § 102(b), "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. Applicants respectfully submit that Bulow fails to disclose each and every element recited in independent Claim 1, either expressly or inherently.

Bulow discloses a protective sheath and securement apparatus for surgical conduits shown in FIGS. 3 and 4 below which includes a fabric sleeve 12, a shield 14 mounted to the distal end of the sleeve 12, and a sheath guide 70 including opposed guide members 72 and 73. Each guide member 72, 73 includes a semicylindrical surface 74, 75, respectively, and a semicircular flange 76, 77, respectively. Guide member 70 serves as a basal element over which fabric sleeve 12 can be telescopically folded. Flanges 76, 77 are secured to shield 14 and function to secure the distal end of sleeve 12 to shield 14.

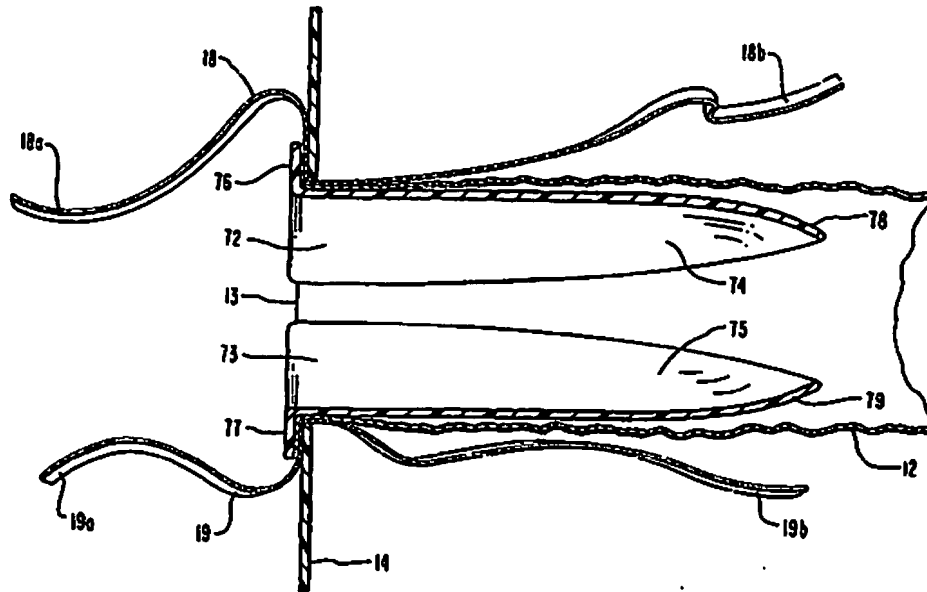


FIG. 3

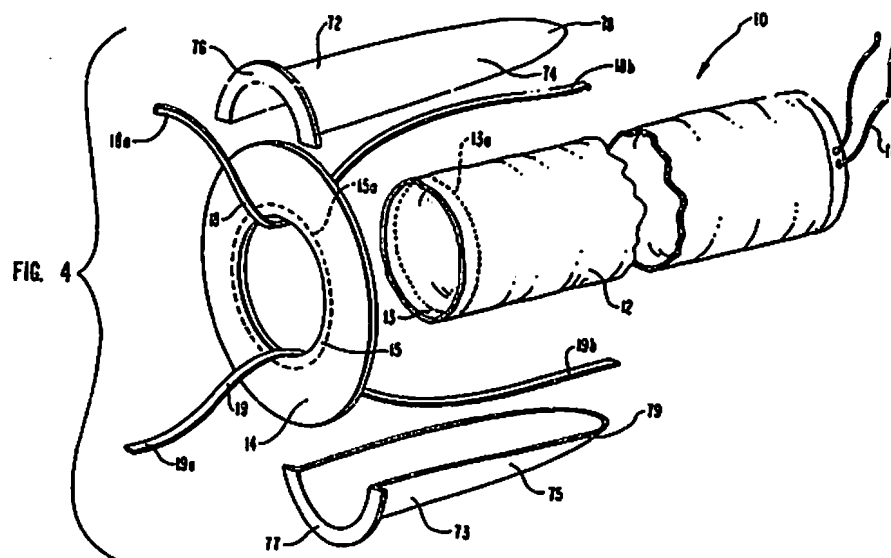


FIG. 4

In use, conduits 32, 42, 52 are inserted through shield 14 and fabric sleeve 12 and a drawstring 11 is tied about the conduits. Next, shield 14 and guide 70 are moved along the conduits (in a direction away from drawstring 11) to unfold fabric sleeve 12 about the conduits. Sheath 10 is then secured to a surgical drape 24 using hemostats 26. Protective sheath 10 functions to protect the conduits from liquids to facilitate cleanup upon completion of the surgical procedure. After the surgical procedure, drawstring 11 is released and conduits 32, 42 and 52 are pulled through shield 14 and fabric sleeve 12.

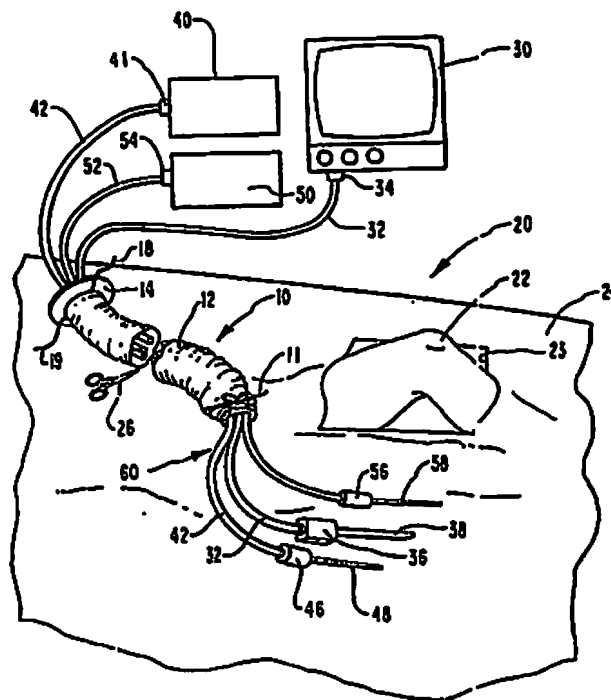


FIG. 1

Applicants respectfully submit that Bulow fails to disclose the surgical instrument recited in Claim 1. More specifically, Bulow fails to disclose the following elements recited in

Claim 1:

- 1) “an elongated cover supported about the body portion of an instrument”
- 2) “the elongated cover being movable about the body portion of the instrument from a first position located proximally of the tool assembly to a second position at least partially encompassing the tool assembly;
- 3) “...the distal end of the elongated cover is secured to the instrument adjacent to the tool assembly such that the elongated cover can be inverted about the tool assembly...”; and
- 4) “a cover deployment device at least partially disposed about the body portion [of the surgical instrument] between the body portion and the elongated cover when the cover is in the first position, the cover deployment device being in releasable engagement with the cover and being advanceable along the body portion to move the cover from the first position to the second position.”

In contrast to the surgical instrument recited in Claim 1, Bulow's protective sheath is not supported about, nor does it function to protect or shield a surgical instrument having a tool assembly. Rather, Bulow's sheath shields hoses or conduits for supplying air, water, power, etc. to a surgical site. Bulow's sheath also does not include a sheath which is movable about a surgical instrument to at least partially encompass a tool assembly of the surgical instrument. The distal end of Bulow's sheath is not secured to a surgical instrument adjacent a tool assembly but rather is secured about a plurality of hoses and to a surgical drape to effectively orient the conduits. See Column 7, lines 52-59. Further, since Bulow's guide 70 is secured to the sheath, the sheath cannot be inverted about a tool assembly. Finally, Bulow's guide 70 is not advanceable along a body portion of a surgical instrument to move the sheath along the

body to a position at least partially encompassing a surgical instrument. In contrast, Bulow must first advance the guide 70 to a position closer to the surgical site, cinch the drawstring 11 and then pull the guide away from the surgical site to deploy the sheath about the hoses. As discussed in Applicants previous response, Bulow also does not disclose a deployment device which is in releasable engagement with the cover. For the reasons discussed above, Bulow does not even remotely teach or suggest the surgical instrument recited in Claim 1. Thus, for any or all of the reasons discussed above, Claim 1 is patentable over Bulow and is in condition for allowance.

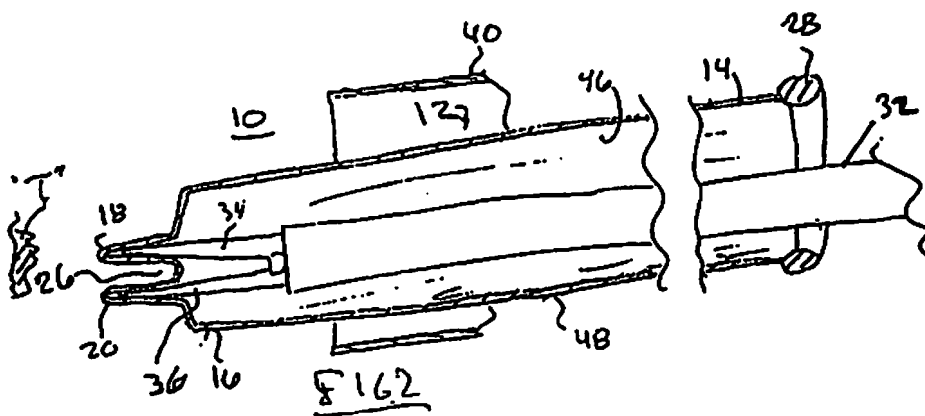
Claims 2, 3 and 5-17 depend either directly or indirectly from Claim 1. For at least the reasons discussed above with respect to Claim 1, inter alia, Applicant submits that Claims 2, 3 and 5-17 are also in condition for allowance.

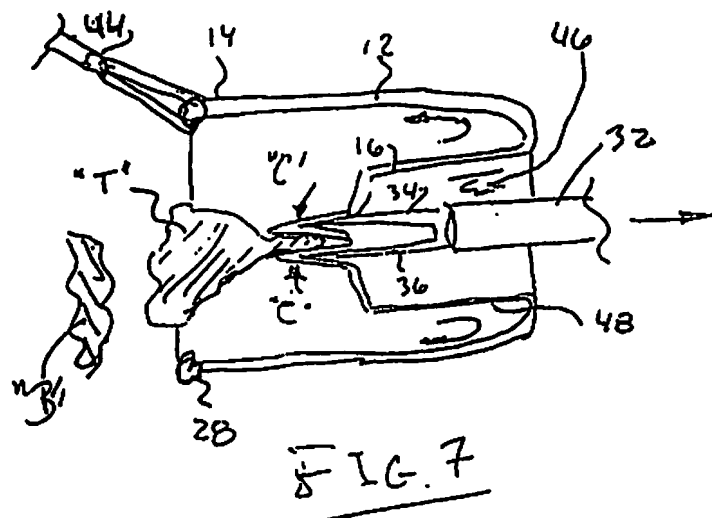
Claims 1-3, 5, 11, 13-17, 21, 25 and 26 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0139767 to Jespersen ("Jespersen").

Jespersen discloses an organ or tissue retrieval bag arrangement 10 shown in FIGS. 2 and 7, reproduced below, including a bag 12 having a first or proximal end 14 and a second or distal end 16. The distal end 16 of the retrieval bag 12 has a pair of generally tapered tubular-shaped grasper receiving tips 18 and 20 extending therefrom to receive grasper jaws 34 and 36, respectively. In use, grasper device 32, including retrieval bag 10, is inserted into a patient through a trocar or other opening in the body until the proximal end 14, including beading 28, is received past the distal end of the trocar. The tissue to be excised is next grasped within jaws 34 and 36 of grasper device 32. Once the tissue has been excised, a second grasper device 44 is used to grab beading 28 at the proximal end 14 of retrieval bag 12 and pull retrieval bag 12 in a distal direction about the excised

tissue. The specification continues, at paragraph [0041],

...The original outer side 48 of the organ retrieval bag 12 thus becomes the inner side of the tissue containment bag once it has been pulled distally from the grasper device 32 and about the tissue/organ "T" being retrieved, as exemplified in FIG. 7. The tissue "T" then may be safely enveloped within the everted organ retrieval bag 12 and removed through the trocar 40 or surgical opening in the patient, without loss of any contaminated fluid or without contaminating tissue components escaping therefrom.





Claim 1 as amended recites, inter alia, “a cover deployment device at least partially disposed about the body portion between the body portion and the elongated cover when the elongated cover is in the first position...”. Claim 21 recites the steps of “providing a surgical instrument including...a cover deployment device...the cover deployment device being positioned on the body portion and the cover being positioned about the cover deployment device...” and “moving the cover from the first position to the second position by advancing the cover deployment device to invert the cover at least partially over the tool assembly...”. Applicants respectfully submit that Jespersen does not disclose either of the recited claim elements. More specifically, as discussed above, Jespersen uses a separate grasper device 44 to invert the retrieval bag 12. Thus, Applicants respectfully submit that independent Claims 1 and 21 are patentable over Jespersen and are in condition for allowance.

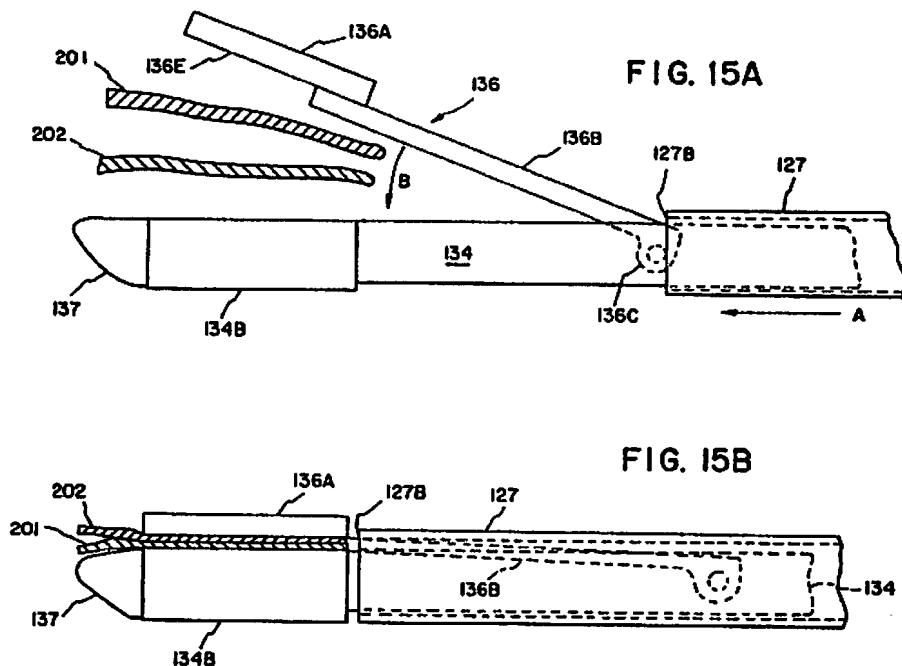
Claims 2, 11 and 13-17 depend from Claim 1 and Claims 25 and 26 depend from Claim 21.

For at least the reasons discussed above with respect to Claims 1 and 21, inter alia, Applicant

respectfully submits that dependent Claims 2, 11 and 13-17 and Claims 25 and 26 are in condition for allowance.

In the Office Action, Claims 30-33 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,318,221 to Green et al. ("Green").

With reference to FIGS. 15A and 15B, reproduced below, Green discloses an instrument having a housing 134 and an anvil member 136. A cartridge assembly 137 is received on a relatively wider section 134B of housing 134. Cartridge assembly 137 includes a plurality of staples (not shown). A collar 127 is slidably positioned over a proximal end of housing 134 and anvil 136 to approximate the housing and the anvil towards one another.





Applicant respectfully submits that Green does not disclose each and every element recited in Claim 30. More specifically, Green does not disclose a surgical instrument including a shell assembly having a plurality of surgical staples and an elongated cover movable from a first proximal position to a second position to cover the stationary shell assembly. As discussed above, Green discloses an instrument including a housing 134 having a relatively wider distal end 134B configured to receive a cartridge assembly 137. Collar 127 is configured to slide distally to approximate anvil 136 towards housing 134, and its movement thereby advances over a proximal end of housing 134. However, as shown in FIG. 15B, collar 127 includes a diameter smaller than that of distal end 134B and anvil plate 136, thereby preventing collar 127 from covering distal end 134B and anvil plate 136. Therefore, collar 127 is not movable from a first position to a second position to cover the portion of housing 134 including cartridge assembly 137 (distal end 134B). In addition, Green does not disclose a cover deployment member positioned about the elongated body portion between the elongated body portion and the cover which is slidable along the body portion to move the cover to its second position as also recited in Claim 30. For these reasons, Applicant submits that Green does not anticipate Claim 30 and that Claim 30 and Claims 31-33 which depend from Claims 30, are in condition for allowance.

Claims 18-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bulow in view of U.S. Patent No. 6,024,741 to Williamson et al. ("Williamson"). Claims 18-20 depend indirectly from Claim 1. Williamson does not provide any disclosure which cures the deficiencies of Bulow with respect to Claim 1 as discussed above. For at least the reasons

Appl. No. 10/522,914  
Amdt. Dated: May 19, 2009  
Reply to Office Action of February 19, 2009

discussed above with respect to Claim 1, Applicant believes that Claims 18-20 are also in condition for allowance.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in the application, namely Claims 1, 2 and 6-26 and 30-33, are in condition for allowance. Accordingly, early and favorable reconsideration of this application is respectfully requested. Should the Examiner feel that a telephone or personal interview may facilitate resolution of any remaining matters, he is respectfully requested to contact Applicant's attorney at the number indicated below.

**CARTER, DELUCA, FARRELL & SCHMIDT, LLP**  
445 Broad Hollow Road - Suite 420  
Melville, New York 11747  
(631) 501-5700

**Correspondence Address:**  
Covidien  
60 Middletown Avenue  
North Haven, CT 06473

Respectfully submitted,



Christopher G. Trainor  
Reg. No. 39,517  
Attorney for Applicant(s)